IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.9.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.480 of 2007

Ravi @ Ravichandran @
Ravikumar @ Naina Ravi .. Petitioner

Vs

1. The Secretary to Government,
   Home, Prohibition & Excise Department,
   Government of Tamilnadu,
   Fort St. George, Chennai 600009.

2. The District Magistrate and
   District Collector,
   Virudhunagar District,
   Virudhunagar. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.M.K.Subramanian
For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The petitioner, Ravi @ Ravichandran @ Ravikumar @ Naina Ravi, son of Balakrishnan, who is the detenu, who was incarcerated by order dated 5.3.2007 of the second respondent under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda, has preferred this writ petition for issue of a Writ of Habeas Corpus to call for the records in connection with the order of

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detention passed by the second respondent dated 5.3.2007 in Cr.M.P.No.6/2007/Goonda against the petitioner, now confined at Central Prison, Madurai, to set aside the same and to direct the respondents to produce the above said detenu before this Court and set him at liberty.

2. The order of detention dated 5.3.2007 came to be passed based on the ground case said to have taken place on 31.1.2007 at about 11.00 hours, on the basis of the complaint lodged by one Sankar before the Inspector of Police, Krishnankovil Police Station. According to the complainant, while he was walking near Ambedkar statue in Sundarapandian Bazar, the detenu along with one Vairam @ Vairamuthu came in a motor cycle and demanded money. When the complainant refused, both of them forcibly took away a sum of Rs.210/- from his shirt packet by threatening him. When the complainant asked to return the money, the person accompanied the detenu attempted to cut his head with a long knife by uttering filthy words. The complainant escaped from the cut by bending his body. The detenu also threatened the complainant and the general public, who were waiting for bus, by brandishing a long knife. They also picked up soda bottles from the nearby shops and thrown on the road side. The bottles fell on the road and scattered all over the road. The public apprehending danger to their lives ran for safety, shop vendors closed the shops and the entire traffic came to standstill causing insecurity in the minds of the public. Both of them decamped from the scene of occurrence. In this regard, a case was registered in Crime No.38 of 2007 on the file of Krishnankovil Police Station under Sections 341, 294(b), 397, 506(ii), 427 and 307 IPC.

3. The second respondent, taking note of this case as a ground case and finding that there are two adverse cases pending against the detenu in Crime No.240 of 2006 on the file of Rajapalayam North Police Station for the offence under Section 307 IPC and Crime No.121 of 2007 on the file of Srivilliputtur Town Police Station for the offences punishable under Sections 147, 148, 307, 302 and 109 IPC, and having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. The learned counsel for the petitioner challenges the impugned order of detention dated 3.5.2007 on two grounds viz., (i) delay in considering the representation made on behalf of the detenu, dated 12.4.2007; and (ii) even though in the grounds of detention, it is mentioned that both the accused were produced before the Court of Judicial Magistrate No.III, Srivilliputtur on 1.2.2007 and lodged in Central Prison, Madurai, to judicial custody upto 16.2.2007, no supporting material viz., the remand order passed by the Judicial Magistrate, has been furnished to the detenu. According to the learned counsel, in view of the non supply of the essential document viz., remand report, the detenu was not in a position to make an effective representation and hence the order of detention vitiates. In support of his contention, the

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learned counsel for the petitioner relied upon the decision of the Apex Court in POWNAMMAL v. STATE OF TAMIL NADU AND ANOTHER [A.I.R. 1999 SC 618].

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

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6.1. Coming to the case on hand, admittedly, objecting to the order of detention dated 5.3.2007, a representation was made on behalf of the detenu on 12.4.2007, which was received by the Government on 13.4.2007. Remarks were called for from the detaining authority on 16.4.2007, which was received by the detaining authority on 21.4.2007. The detaining authority, in turn, called for parawar remarks from the sponsoring authority on 23.4.2007. The remarks of the sponsoring authority was received on 24.4.2007. The detaining authority sent the remarks to the Government on 25.4.2007 and the same was received on 26.4.2007. Thereafter, the file was submitted only on 3.5.2007, after a delay of 7 days, and the same was considered by the Under Secretary on 3.5.2007 itself and Additional Secretary on 4.5.2007. The file was considered by the Minister on 4.5.2007 itself. The rejection letter was prepared on 4.5.2007. However, the same was sent to the detenu on 9.5.2007 and served on him on 14.5.2007.

6.2. The delay of four days (excluding Saturday and Sunday) on the part of the Government in submitting the file before the Under Secretary, which has not been properly explained, cannot be excused.

7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

9. In the instant case, admittedly, there is delay of four days in submitting the file before the Under Secretary as referred to above, which vitiates the impugned detention order.

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10. As far as the second ground viz., non-supply of remand order relied on in the grounds of detention, is concerned, it is apt to refer the decision of the Supreme Court in POWNAMMAL v. STATE OF TAMIL NADU, cited supra, where the Tamil version of the remand order, which is a relied upon document, was not supplied to the detenu even though it was demanded by the detenu, the Apex Court held thus -

> " 15. Adverting to the facts of this case, the appellant has made a representation for supply of Tamil version of the copy of order of remand and specifically stated that the detenue could not understand English language. Admittedly, Tamil version of order of remand was not furnished to her. A perusal of the grounds shows that the order of remand was relied upon by the second respondent to reach subjective satisfaction, so the detenue need not show that any prejudice was caused to her due to non-supply of the Tamil version of order of remand. Therefore, the High Court is not correct in holding that non-furnishing of the copy of the order of remand would not in any way prejudice the detenue."

11. In view of the decision of the Apex Court cited supra, we find some force in the argument of the learned counsel for the petitioner that the detenu was prejudiced by non-supply of the remand order, as he had been deprived of his opportunity to make an effective representation and hence, the impugned order of detention vitiates on this ground also.

In the result, the order of detention dated 5.3.2007 is set aside. The detenu Ravi @ Ravichandran @ Ravikumar @ Naina Ravi is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Secretary to Government,
   Home, Prohibition & Excise Department,
   Government of Tamilnadu,
   Fort St. George, Chennai 600009.

2. The District Magistrate and
   District Collector,
   Virudhunagar District, Virudhunagar.

3. The Superintendent,
   Central Prison, Madurai.

4. The Public Prosecutor,High Court, Madras.

5. The Joint Secretary, Government of Tamil Nadu,
Public [Law & Order], Fort St. George, Chennai 600 009.

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